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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,230	03/24/2004	Erik K. Straub	STRAUB-PA-2	5001
7590 OBER / KALER c/o Royal W. Craig 120 East Baltimore Street Baltimore, MD 21202			EXAMINER SAFAVI, MICHAEL	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 01/11/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/808,230

Applicant(s)

STRAUB, ERIK K.

Examiner

M. Safavi

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-18 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The reply filed on October 22, 2007 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Applicant's response filed October 22, 2007 does not specify an election from the third Group of species. It has been noted that the response has expressed that Applicant provisionally elected "pavement shoeing plank" from the fourth Group of species. However, it is not clear whether or not Applicant is indicating an election of pavement from the third Group of species. In any event, the requirement for election of species did not include an application as to pavement for the shoring plank species as the instant disclosure does not appear to set forth use of a shoring plank for pavement.

Below find a modified requirement for restriction as to election of species.

Election/Restrictions

This application contains claims directed to the following patentably distinct species: There are three Groups of species from which Applicant must elect.

First group of species: (as to lifting handle): **I)** Fig. 2; **II)** Fig. 3; **III)** Fig. 4; **IV)** Fig. 5/6.

Second group of species: (as to reinforcement): **I)** wire mesh; **II)** rebar.

Third group of species: (as to plank type): **I)** ground plank (planar ends and sides); **II)** shoring plank (notches at end); **III)** stack wall plank (holes at end).

Fourth group of species: (as to application): **I)** foundation mat; **II)** liner mat for waterway; **III)** soil erosion mat; **IV)** pavement; **V)** retaining wall; **VI)** trench wall; **VII)** above ground wall.

If Applicant elects species I from the Third Group of species then Applicant is required to elect from between the following Fourth Group of species as to application of use: I) road/walkway; II) sub grade use for paving; III) covers flush with ground; IV) bridging a ditch; V) lining a ditch/canal; VI) soil erosion control.

If Applicant elects species III from the Third Group of species then Applicant is required to elect from between the following Fourth Group of species as to application of use: I) stack/crib wall; II) dome.

Applicant shall elect a species from each of the Group I species, Group II species, Group III species as well as from the Fourth Group of species commensurate with that election made with respect to type of plank in the Third Group of species.

The species are independent or distinct because each listed species is mutually exclusive one from another. For example, as to the Third Group of species the species of ground plank has planar ends and sides while the species of shoring plank has notches at the ends) with the species of stack wall plank having holes at the ends.

The distinction between species of lifting handle Fig. 2 is one of a bent rebar while the species of Fig. 3 is one of a PVC formed handle while the species of Fig. 4 is one of a bolt handle while the species of Fig. 5/6 is one of a hinged plate handle.

The distinction between species of reinforcement is wire mesh having wires arranged in a crossing fashion while a rebar has a rod structure.

The distinction between species of Application is self evident.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from each of the above four groups of species for prosecution on the merits to which the

claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 appears generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of

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record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Safavi
December 28, 2007



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354